

European Scrutiny Committee

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From: Sir William Cash MP

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Regulation strengthening the security of identity cards and residence documents (Council document 8175/18) (ESC number 39646)

The European Scrutiny Committee has been in correspondence with the Home Office on an EU Regulation (adopted in June 2019) which is intended to strengthen the security of identity cards and residence documents used by EU citizens and their non-EU family members to move more easily within the EU/EEA.

Our predecessor Committee had expressed interest in the possible impact of the Regulation (then a proposal) on border crossings between Spain and Gibraltar. We understand that the Regulation (as adopted) will apply from 2 August 2021 and so will not take effect in the UK or in Gibraltar. The Minister for Future Borders and Immigration (Kevin Foster MP) did, however, indicate that the legal regime which would apply at the Spain/Gibraltar border from 1 January 2021 was under negotiation and that the Government of Gibraltar would be seeking “the best possible border crossing solution” given the importance of this border crossing point for the Gibraltar economy.

In my [letter of 15 October 2020](#), I drew the Minister’s attention to press reports suggesting that one solution mooted by Spain would be for Gibraltar to join the internal border-free Schengen area.¹ Whilst this would remove one source of potential disruption at the border between Spain and Gibraltar, it would also risk creating new obstacles to movement between the UK and Gibraltar. I therefore requested further information on the respective positions of the UK Government

¹ See the [Politico report on 15 September 2020](#) (*Spain pushes for Gibraltar to join Schengen area after Brexit transition ends*), the [schengenvisainfonews](#) website on 15 September 2020 (*Spain wants Gibraltar to become part of the Schengen zone*), and the [etias.info](#) website (*Could Gibraltar join Schengen after Brexit?*)

and the Government of Gibraltar on both the feasibility and desirability of Gibraltar seeking to participate in the Schengen free movement area.

The Minister told the Committee in his [response of 28 October 2020](#) that he had consulted the FCDO and had been advised that they were “unable to comment” while negotiations were ongoing. The Committee is not satisfied with this response. The Government has made clear on many occasions before and during exit and future relationship negotiations with the EU that the UK will not participate in Schengen as a non-EU country. While we appreciate that different considerations may apply as regards Gibraltar, we can see no reason why the Government cannot clarify its position on the feasibility and desirability of Gibraltar participating in Schengen when EU rules on the free movement of persons cease to apply at the end of the year.

In his evidence to the House of Lords European Union Committee on 24 November 2020, the Chief Minister of Gibraltar, Hon Fabian Picardo QC, said the following:

“...we are looking at an arrangement that provides the maximal unrestricted level of fluidity of persons that may be possible, which today is best characterised in the context of the existing arrangement in the European Union as Schengen mobility between the Member States but, properly analysed once the agreements are done, may be an arrangement of [a] common travel area between Gibraltar and the Schengen area. It may be that we find a different legal formulation in the coming weeks that is more acceptable to the European Commission, the United Kingdom, Gibraltar and Spain. I would say that the final legal form is not yet in stone.”

The objective, if not the exact means of achieving it, seems clear enough. We therefore reiterate our request (raised initially with the Home Office) for details of the Government’s position on the mobility arrangement which appears to be envisaged at the border crossing between Gibraltar and Spain. We ask you to reply within 10 working days in the expectation that you will wish to ensure Parliament is informed of the Government’s position (and factors underpinning it) before, not after, any agreement is reached.

I am copying this letter to the Chair (Rt Hon. Yvette Cooper MP) and Clerk (Elizabeth Hunt) of the Home Affairs Committee; the Chair (Rt Hon. Hilary Benn MP) and Clerk (Gordon Clarke) of the Committee on the Future Relationship with the European Union; the Chair (Tom Tugendhat MP) and Clerk (Chris Shaw) of the Foreign Affairs Committee; the Chair (the Earl of Kinnoull) and Clerk (Stuart Stoner) of the Lords European Union Committee; Adam Nutley of your Department; and Les Saunders and Donald Harris in the Cabinet Office.

CHAIR